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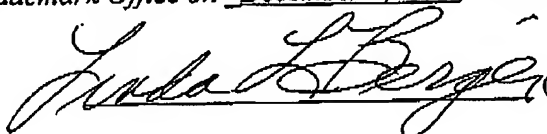
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1) Pre-Appeal Brief Request for Review (5
Pages)

Inventor(s):Kline, et al.

2) Notice of Appeal (1 Page)

S.N.: 10/757,629

3)

Filed: January 14, 2004

4)

Docket No.: 8194C

5)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 8194C	
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		First Named Inventor Mark J. Kline, et al	
		Art Unit 3761	Examiner Laura C. Hill
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71, Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. <u>46,707</u> Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>Adam J. Forman</u> Signature <u>Adam J. Forman</u> Typed or printed name <u>(513) 634-0452</u> Telephone number <u>December 7, 2005</u> Date	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/757,629
Applicant(s) : Mark J. Kline, et al. et al.
Filed : January 14, 2004
Title : Absorbent Article with Improved Fastening System
TC/A.U. : 3761
Examiner : Laura C. Hill
Conf. No. : 4664
Docket No. : 8194C
Customer No. : 27752

PRE-APPEAL BRIEF REQUEST FOR REVIEW AND
NOTICE OF APPEAL

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450
Dear Sir:

REMARKS

Applicant hereby requests a Pre-Appeal Brief Conference.

Claim Status

Claims 1, 4-5, and 8-15 are pending in the present application. No additional claims fee is believed to be due.

Appl. No. 10/757,629
Atty. Docket No. 8194C
Amdt. dated January 14, 2004
Notice of Appeal and Request for Conference after Final Office Action of October 6, 2005
Customer No. 27752

Rejection Under 35 USC §102(b) Over Gilman

claims 1, 4-5, and 8-10 under 35 U.S.C. 102(b) as being unpatentable over Schmidt in view of Vukos. Applicants respectfully traverse the rejection by the Office.

Finality of Office Action:

Applicant requests that the finality of the Office Action be withdrawn as being premature. Specifically, as discussed at Page 4 of the Response to Final Office Action filed concurrently herewith, Applicant's previous amendment did not necessitate new grounds for the present amendment. Rather, Applicant amended claim 1 in light of the confusion of the claim term that was embodied in the rejection. The amendment to claim 1 did not affect the substance or the scope of the claim.

Claim 1:

The Office Action cites Schmidt at Col. 6, lines 63-68 and Fig. 3 as disclosing a backing tape used in a surface fastening system that is able to withstand different tear and tensile forces applied across the tape in varying directions and degrees when the user moves.

However, claim 1 does not recite a surface fastening system that is able to withstand different forces. Rather, claim 1 recites that the surface fastening system has different levels of resistance to disengagement in different directions (emphasis added).

The invention recited in claim 1 and the Schmidt disclosure are quite different. Schmidt states that surface fastening systems are subjected to varying forces while the wearer movement and, as a result, many common tape backings lacked suitable strength characteristics to withstand these use requirements. As a result, Schmidt continues, special attention must be given to providing higher tear and tensile properties. See Col. 2, lines 1-11. It is therefore a high tear and tensile property that enables Schmidt's surface fastening system to withstand the variable forces experienced during use, and not a fastening system having different levels of resistance to disengagement. In fact, Schmidt states that "the primary object" of the invention is to provide a unique, aggressively tacky pressure sensitive adhesive tape having desirable tear and tensile strength properties (col. 3, lines 4-7). Schmidt therefore discloses that tape bases having cross direction tensile strengths above 25 lbs./inch have adequate strength for use on diapers (col. 3, lines 45-48).

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Applicant could not identify any teaching or suggestion within Schmidt to provide a surface fastening system having different levels of resistance to disengagement in different directions.

Vukos is cited for disclosing a disposable absorbent article having a surface fastening member that defines a Y-dimension that increases in a direction from a distal edge to a proximal edge.

The Office Action states that one skilled in the art would be motivated to combine Vukos with Schmidt because Vukos would provide an easier mechanism to grip and open the tab. However, Schmidt already discloses a mechanism to facilitate opening of the disclosed surface fastening member. Namely, Schmidt discloses a protective cover strip 30 that is wider and longer than the adhesive tape 10 to provide a convenient handle for removal (see col. 7, lines 1-2; Fig. 2). Accordingly, the amount of projection of Vukos' distal edge would provide an advantage that is redundant with respect to the wider and longer dimensions of Schmidt's cover strip 30. Furthermore, Schmidt discloses no teaching or suggestion to use a non-rectangular surface fastening strip, and the reference is devoid of any motivation to incorporate the shape disclosed in Vukos.

Because no teaching or suggestion exists in either of the references to incorporate the teachings of Vukos in Schmidt, the combination of Schmidt and Vukos does not render claim 1 obvious.

Furthermore, even if Schmidt and Vukos were combined, the combination would fail to teach or suggest every element of claim 1. For instance, as discussed above, the combination of references would fail to teach or suggest that the surface fastening system has different levels of resistance to disengagement in different directions.

For the foregoing reasons, Applicants assert that claim 1 is patentable over the cited references. Therefore, Applicant asserts that claim 1 is in condition for allowance. Moreover, because claims 4-5, and 8-15 depend from claim 1, Applicants assert that they are also not anticipated by Gilman and are therefore in condition for allowance.

Claim 4:

The Office Action rejects claim 4 over Schmidt and Vukos because Vukos' distal edge is said to be smaller than the proximal edge (see annotated Fig. 1 in Office Action). However, the distal edge and proximal edge are in longitudinal alignment, and can

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therefore not be equated with the presently claimed longitudinally outboard and inboard edges. Rather, the upper and lower edges in Vukos Fig. 1 are longitudinally outboard and inboard of each other. However, the upper and lower edges in Vukos have the same length and therefore do not teach or suggest the invention recited in claim 4.

For this additional reason, Applicant asserts that dependent claim 4 is patentable over the prior art.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC §102(b). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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Date: December 7, 2005
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